

Federal Communications Commission

WASHINGTON, D C 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revision of the Commission's Rules to Ensure) CC Docket 94-102
Compatibility with Enhanced 911 Emergency)
Calling Systems)

To The Commission

INTERIM REPORT WAIVER REQUEST OF BACHOW/COASTEL, L.L.C.

Bachow /Coastel, L L C ("Bachow/Coastel"), pursuant to section 1 925 of the Commission's rules¹ and by its attorneys, hereby submits the following request for waiver of section 20 18(i) of the Commission's rules and of the August 1, 2003 interim report filing deadline established by the Commission,² to the extent such a waiver may be necessary. Section 20 18(i) of the Commission's rules establishes a deadline for filing a report to the Commission that would indicate whether the carrier plans to deploy network-based or location-based location technology in providing Phase II enhanced 911 ("E-911") services; the Commission's Order to Stay extended this deadline to August 1, 2003³ Based on communications with the United States Coast Guard ("USCG"), which serves as the *de facto* Public Safety Answering Point ("PSAP") in the Gulf of Mexico (the "Gulf"), and due to the unique circumstances of providing

¹ See 47 C F R § 1 925

² See *Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, para 34 (2002)

³ *Id*

cellular service in the Gulf. Bachow/Coastel herein submits that, to the extent a waiver may be necessary, a grant of this request would serve the public interest.

I. Background.

Bachow/Coastel is the Commission licensee of cellular station KNKA412, with a license area coterminous with the Gulf. Bachow/Coastel utilizes an analog system, and primarily markets handsets fixed to an oil or gas rig, as opposed to mobile handsets.⁴ Bachow/Coastel markets a small quantity of “bag phones,” that can operate outside of a fixed location.⁵

Currently, all emergency calls made from Bachow/Coastel’s subscribers in the Gulf are routed through Bachow/Coastel’s lone switch to the USCG.⁶ The USCG is the *de facto* PSAP for the Gulf.⁷ In its discussions with Bachow/Coastel, the USCG has clearly indicated its preference for existing arrangements to remain in place with respect to emergency calls from Bachow/Coastel subscribers.⁸

II. The Commission’s Rules.

Section 20.18(j) of the Commission’s rules states that the Phase I E-911 services, Phase II E-911 services and accuracy standards, and the phase-in periods and requirements for network-based and location-based location technologies, are “applicable only if the administrator of the

⁴ See Waiver Request of Bachow/Coastel, L.L.C., *Exhibit A* (Declaration of Glynn S. McClellan, General Manager of Bachow/Coastel, L.L.C.) (October 3, 2001) (“McClellan Declaration”).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

designated Public Safety Answering Point has requested the services required and is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place."⁹ To date, the USCG has not requested E-911 services from Bachow/Coastel,¹⁰ and to Bachow/Coastel's knowledge, the USCG is incapable of receiving and utilizing the data elements associated with such service.¹¹ Thus, the Commission's rules do not require Bachow/Coastel to provide Phase I or Phase II E-911 services, or to provide location-based technologies.¹²

As the Commission's E-911 requirements are inapplicable to Bachow/Coastel, so too should the report described in section 20.18(i) of the Commission's rules and the Commission's Order to Stay be inapplicable to Bachow/Coastel. That Commission rule provision requires carriers to report to the Commission by November 9, 2000 (extended to August 1, 2003 by the Commission's Order to Stay) the methods by which carriers will deploy Phase II E-911 services, including the location-determination technology that the carriers planned to employ, and the procedure the carriers intended to use to verify conformance with the Phase II accuracy requirements.¹³ Because the Commission's rules do not require Bachow/Coastel to employ any

⁹ 47 C.F.R. § 20.18(j)

¹⁰ See *Exhibit A*. As the Commission is aware, the principal function of E-911 is to assist public safety authorities in pinpointing the geographic location of an emergency call made from a cellular phone. Given that the vast majority of Bachow/Coastel's customers operate from a known, fixed location, unlike the land-based mobile cellular phones, the USCG's decision not to implement E-911 is entirely reasonable.

¹¹ See McClellan Declaration.

¹² See 47 C.F.R. § 20.18(j)

¹³ See 47 C.F.R. § 20.18(i)

Phase II E-911 services or location-determination technology, Bachow/Coastel has nothing to report to the Commission on those matters, and thus section 20.18(i) is inapplicable to Bachow/Coastel

III. Waiver Request.

To the extent that the Commission disagrees with the foregoing interpretation, Bachow/Coastel respectfully requests a waiver of section 20.18(i) of the Commission's rules, *nunc pro tunc*. Section 1.925(b)(3) of the Commission's rules provides that the

Commission may grant a request for waiver if it is shown that: (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁴

The underlying purpose of section 20.18(i) Commission's rules would not be served by application to Bachow/Coastel. The purpose of the report referenced in section 20.18(i) of the Commission's rules was "to keep Phase II on schedule and to encourage and monitor advance planning and discussion among the parties involved in Phase II,"¹⁵ and to assist "public safety organizations in their planning for Phase II implementation . . ."¹⁶ Applying a requirement for filing the report to Bachow/Coastel does not serve these purposes because Bachow/Coastel has

¹⁴ 47 C.F.R. § 1.925(b)(3)

¹⁵ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, ¶ 75 (2000) (citing *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Third Report and Order, 14 FCC Rcd 17388, 17427 (1999), and 47 C.F.R. § 20.18(h))

¹⁶ *Id.* at ¶ 79

never been subject to Phase II E-911 requirements, and would have nothing to report. Thus, requiring Bachow/Coastel to file a report with no information would not “keep Phase II on schedule” and would not assist the USCG in “planning for Phase II implementation,” because there is no Phase II implementation.

In view of the unique circumstances of the instant case, namely that Bachow/Coastel switches emergency calls to the USCG and has not received a request for any E-911 services from the USCG, requiring Bachow/Coastel to file an “empty” report would be inequitable and unduly burdensome. Bachow/Coastel is not like other cellular carriers that have received E-911 requests from their PSAPs, Bachow/Coastel has no Phase II E-911 implementation requirement on which to report. Thus, it would not be fair, and would be unduly burdensome, to require Bachow/Coastel to expend its resources to file the same report as carriers that face Phase II E-911 requirements. Furthermore, requiring Bachow/Coastel to file such a report would waste the Commission’s resources, because Bachow/Coastel’s filing would have nothing to report and would thus not assist the Commission in monitoring compliance with Phase II E-911 requirements. Grant of this waiver request, to the extent it is necessary, would therefore benefit the public interest by avoiding the waste of valuable Commission resources, and ensuring a fair application of the rule that is consistent with its purpose.


CONCLUSION

For all of the foregoing reasons, Bachow/Coastel respectfully submits that all of the requirements of section 20.18(d)-(1) of the Commission's rules do not apply to it. Out of an abundance of caution, Bachow/Coastel otherwise requests that the Commission grant Bachow/Coastel a waiver of section 20.18(1) of the Commission's rules and the Commission's August 1, 2003 interim report deadline *nunc pro tunc*.

Respectfully submitted,

BACHOW/COASTEL, L.L.C.

By



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Date August 1, 2003

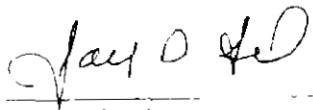
EXHIBIT A
DECLARATION OF JAY D. SEID

I, Jay D. Seid, declare the following under penalty of perjury

1 I am the Managing Director of Bachow & Associates, Inc., the ultimate general partner of Bachow Coastal, LLC ("Bachow Coastal")

2 To date, the USCG has not requested E-911 services from Bachow Coastal

I have read the foregoing Interim Report Waiver Request and declare under penalty of perjury that the foregoing is true and correct to the full extent of my knowledge and belief
Executed on July 31, 2003



Jay D. Seid